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AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>OF DELAWARE</u>
Name <u>PHYLLIS DRUMMOND</u>	Prisoner No. <u>00241930</u>	Case No. <u>0311018699A</u>
Place of Confinement <u>BAYLOR'S WOMEN CORRECTIONAL INSTITUTE</u>		
Name of Petitioner (include name under which convicted) <u>PHYLLIS DRUMMOND</u>		Name of Respondent (authorized person having custody of petitioner) <u>V. WARDEN, RYAN PATRICK</u>
The Attorney General of the State of: <u>DELAWARE</u>		
PETITION		
1. Name and location of court which entered the judgment of conviction under attack <u>SUPERIOR, SUSSEX COUNTY</u>		
2. Date of judgment of conviction <u>11-12-04</u>		
3. Length of sentence <u>20 YEARS AT LEVEL 5 WITH CREDIT FOR 355 DAYS, FOLLOWED BY 6 MONTHS AT LEVEL 4 WORK RELEASE, FOLLOWED BY 18 MONTHS AT LEVEL 3.</u>		
4. Nature of offense involved (all counts) <u>ROBBERY 1ST, WEARING A DISGUISE</u>		
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5. What was your plea? (Check one) <p>(a) Not guilty <input checked="" type="checkbox"/></p> <p>(b) Guilty <input type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: <u>W/JX</u>		
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6. If you pleaded not guilty, what kind of trial did you have? (Check one) <p>(a) Jury <input checked="" type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

FILED
JAN 29 2007
U.S. DISTRICT COURT
DISTRICT OF DELAWARE

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9. If you did appeal, answer the following:

(a) Name of court SUPREME COURT OF THE STATE OF DELAWARE

(b) Result AFFIRMED

(c) Date of result and citation, if known AUGUST 24, 2005

(d) Grounds raised IT WAS ERROR OF LAW WHEN TRIAL COURT DENIED DEFENDANT'S
(3) DENY JUDGMENT OF ACQUITTAL,
(1) MOTION TO SUPPRESS, (2) TO ADMIT TRANSCRIPT OF TAPE STATEMENT,

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court SUPERIOR

(2) Nature of proceeding POSTCONVICTION RELIEF

(3) Grounds raised MOTION TO SUPPRESS, ADMITTANCE OF TRANSCRIPT OF
(3)
TAPE STATEMENT, AND DENIAL OF JUDGMENT OF ACQUITTAL

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result DENIED

(6) Date of result MAY 24, 2006

(b) As to any second petition, application or motion give the same information:

(1) Name of court SUPERIOR

(2) Nature of proceeding POSTCONVICTION RELIEF

(3) Grounds raised (1) JURY INSTRUCTIONS - That there were never any jury instructions on presumption of innocence; burden of proof or reasonable doubt (2) Ineffective Counsel - (a) fail to have written stipulation of my Polygraph test results. (c) failed to present a coherent argument based on defense of police fabrication.

(3) Legally insufficient evidence and invalid consent

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result DENIED

(6) Date of result OCTOBER 26, 2006

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
 (2) Second petition, etc. Yes No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

ON THE FIRST PETITION, I DIDN'T HAVE THE KNOWLEDGE OR INFORMATION ON WHERE AND HOW TO APPEAL SO THAT'S WHEN I DID THE SECOND POSTCONVICTION RELIEF AND SENT BACK A REPETITIVE MOTION; AFTER IT WAS DENIED.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: INEFFECTIVE COUNSEL - CONVICTION OBTAINED BY USE OF COERCED CONFESSION

Supporting FACTS (state briefly without citing cases or law): Didn't object to perjury when the detective said I confessed, when in fact his interview clearly states he wasn't receiving a confession. Counsel should had put a motion in to suppress my prior record and she didn't. Counsel should had argued more on the fact that I passed a polygraph test and the identification being a issue was grounds for it to be submitted to the jury with written stipulations. (If my Counsel would had pushed for these facts the verdict would had been not guilty.)

B. Ground two: CONVICTION OBTAINED BY USE OF EVIDENCE GAINED PURSUANT TO AN UNCONSTITUTIONAL SEARCH AND SEIZURE

Supporting FACTS (state briefly without citing cases or law): The detective stated he arrived at my residence at 7:20 p.m and the first consent form was signed at 7:25 p.m but then on cross examination he stated he arrived at 7:30 p.m. then the consent form was invalid. He even stated arriving at 8:05 pm and the second consent form was signed at 7:48 p.m. My fourth amendment was violated along with my due process. We were not secured in our papers persons, houses, or effects. we were removed.

C. Ground three: CONSTITUTIONAL VIOLATIONS

Supporting FACTS (state briefly without citing cases or law): My Confession was obtained involuntarily in violation of my fourteenth amendment due process rights. My lawyer didn't represent me effectively at trial or my direct appeal. An error occurred during trial that made the trial fundamentally unfair in violation of my Fourteenth Amendment. Evidence was insufficient to sustain jury's verdict of guilty beyond a reasonable doubt.

D. Ground four LEGALLY INSUFFICIENT EVIDENCE

Supporting FACTS (state briefly without citing cases or law): None of the evidence matched. Everything that the perpetrator were was either navy blue or black. The car was described as a 2-door teal green Toyota Camry. The gun was a small black automatic with two holes. Perpetrator - black male, 5'02 to 5'04, dark skin, thick mustache, 130 to 140 lbs. (my clothings blue ball cap with pepsi logo, blue & white plaid jacket with red stripes Car - 4-door dark forest green Subaru impreza, silver & black bb gun with one hole, Black female - 4'11, medium brown, no facial hair, 114 lbs)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them:

N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing CAROLE S DUNN, PUBLIC DEFENDER, 14 THE CIRCLE
2ND FLOOR, GEORGETOWN DE 19947

(b) At arraignment and plea SAME

(c) At trial SAME

(d) At sentencing SAME

(e) On appeal SAME

(f) In any post-conviction proceeding PRO SE

(g) On appeal from any adverse ruling in a post-conviction proceeding PRO SE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

X 1-8-07
(date)

John Doe

Signature of Petitioner

Obstruction of Justice

The detective knowingly made a false statement. He intentionally omitted information from the statements and caused a portion of the statements to be misleading. He intentionally concealed material facts by creating a false impression by the statements. He used tricks; schemes and false information from the recording interview in order to obtain a arrest warrant. He also influenced the minds of the jury with his false and misleading statements.

Ineffective Counsel

1. There were procedural defaults because my counsel did not raise the legally insufficient evidence claim and did not object to perjury.
2. She didn't submit a motion to have my polygraph test results admitted with a written stipulation since the judge said the identification was an issue.
3. Trial Counsel failed to present a coherent argument based on defense of police fabrication.
4. Trial Counsel should had submitted a motion to suppress my prior criminal record.
5. Trial Counsel allowed my due process right to be violated because she never requested for me to have a fair identification procedure done. So the judge allowed my driver's license and work identification to entry into the jury room.
6. Jury instructions on the presumption of innocence, burden of proof and reasonable doubt as well as legally insufficient evidence was barred because they wasn't raised on direct appeal by my lawyer. If my lawyer would had raised these issues I would had succeeded because the state's evidence was insufficient, falsified, unfair and Contradictory.

1. My confession was obtained involuntarily in violation of my Fourteenth Amendment due process rights. I was deceived by false promises of help, and was deprived of the support of friends until I confessed.
2. My lawyer did not represent me effectively at trial. She never objected to perjury and she knew the detective was lying. The judge even tried to get her to tell the detective that he was lying.
3. My lawyer did not represent me effectively in my direct appeal. She didn't raise the issue of the legally insufficient evidence. She never raised the issue of the consent form that was signed by Perry Giddens was invalid. The detective testified that he was at the residence at 7:20 p.m. and then in the first consent form was signed at 7:25 p.m. and then in the cross examination he admitted to arriving at the residence at 7:30 p.m. My fourth amendment was also violated because we were not secured in our persons, houses, papers and effects against unreasonable searches and seizures.

In the Interest of Justice

The verdict is against the weight of the evidence. None of the evidence matched. The perpetrator wore navy or black clothing. The car was described as a two-door teal green Toyota Camry. The gun was described as a small black automatic with two holes. The perpetrator was described as a black male 5'02 to 5'04, dark skin, thick mustache, 130 to 140 pds. The clothing that was taken from my residence was a blue baseball cap with a Pepsi logo, blue & white plaid jacket with red stripes. My car was a four-door dark forest green Subaru Impreza. The gun was a silver & black bb gun with one hole. My description is a black female, 4'11, medium brown, no facial hair, 114 pds.

"On the Law"

The evidence presented by the prosecution was not sufficient to prove all the necessary elements of the crime of which I were convicted. I was convicted but the prosecutor did not prove that I was at the Wilmington Trust or the fact that I was the one who robbed it.

Fundamental miscarriage of Justice

1. The judge and prosecutor used ^{fraud,} false statements ("misrepresentation") to secure my conviction.

2. At my trial, the prosecutor introduced ("material") evidence that she knew was false and the judge allowed it in.

3. The prosecutor introduced important ("material") evidence that was obtained in violation of my rights under the U.S. Constitution.

4. I have uncovered new evidence since my trial and I could not have discovered it before or during my trial.

5. My conviction was obtained in violation of my Constitutional rights.

1) The detective lied and said I confessed when in fact the interview clearly states that he said we're not receiving a confession.

2) In the affidavit the detective made false statements about what the witnesses suppose to have said.

3) The detective said he interviewed my sister (Ms. Hicks). Before the trial begin the prosecutor spoke to her and found out she was never interview by the police.

The detective committed perjury when he made false statements under oath. The judge and the prosecutor knew he was false swearing.

RHYS DUMMUND

660 BAYLOR BLVD

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U.S.M.S.
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